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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

ANDREW VASSILIOU,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA,

Defendant and Respondent.

F076047

(Super. Ct. No. CV59777)

OPINION

APPEAL from a judgment of the Superior Court of Tuolumne County. Kevin M. Seibert, Judge.

Andrew Vassiliou, in pro. per., for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Kristin G. Hogue, Assistant Attorney General, and Alberto L. Gonzalez, Deputy Attorney General, for Defendant and Respondent.

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Plaintiff Andrew Vassiliou, acting in propria persona, appeals from a judgment of dismissal of the underlying action with prejudice after the trial court granted defendant State of California's (State) motion to strike the third amended complaint and Vassiliou failed to seek or obtain leave of court to file a fourth amended complaint. In violation of

California Rules of Court, rule 8.204,¹ Vassiliou’s opening and reply briefs do not contain separate headings summarizing any points made, do not support each point by pertinent or intelligible legal argument, do not cite to pertinent legal authority, and do not contain a single citation to the record in support of the factual assertions made. As Vassiliou’s briefs do not comply with the Rules of Court, we will dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Vassiliou, who represented himself throughout these proceedings, initiated this action on November 12, 2015, by filing a Judicial Council form complaint that alleged a single claim for general negligence. On March 1, 2016, Vassiliou filed a “motion to compel appearance of representing counsel of attorney gener[]al.” (Capitalization omitted.)

On March 14, 2016, the State filed a demurrer to the complaint, which was set for hearing on April 22, 2016. The State argued the complaint: (1) failed to state a statutory basis of liability against the State; (2) failed to allege compliance with, or excuse from, the requirements under the Government Claims Act; (3) failed to identify a date when the alleged injuries occurred; and (4) was so confusing, unintelligible and uncertain that the action alleged or responsible defendants could not be identified. Vassiliou filed an opposition to the demurrer on April 4, 2016.

On April 8, 2016, the trial court held a hearing on Vassiliou’s “Motion to Compel, Motion – Contempt/Failure to Comply, Motion – Summary Judgment and Motion for Pre-Trial Order,” and continued these motions to be heard at the same time as the State’s demurrer.² According to the minute order of the April 22, 2016 hearing, Vassiliou appeared via CourtCall. Since no request for oral argument was received, the tentative

¹ Further rule references are to the California Rules of Court.

² No parties were present at the hearing. While there is a “motion to compel” (capitalization omitted) in the clerk’s transcript, the other motions are not included.

rulings became the court's order, namely, that Vassiliou's motions were denied without prejudice, while the State's demurrer was sustained with 20 days' leave to amend.

On May 18, 2016, Vassiliou filed an amended Judicial Council form complaint "three" (the third amended complaint).³ Vassiliou purported to allege causes of action for motor vehicle, general negligence, intentional tort, products liability, premises liability, and "Other," which he listed as "unintentional tort by the superior court of the state of california illeagle [*sic*] distribution of the estate of demetrui s vassiliou[,] intentional tort by john caynac[,] pourposely [*sic*] withholding product exposure [*sic*]." While the form complaint stated each of these causes of action was attached, there were no attachments to the complaint.

A case management conference (CMC) was conducted on November 18, 2016, with the parties appearing via CourtCall. The CMC was continued to February 10, 2017.⁴

On February 8, the State filed a motion to strike the third amended complaint on the ground that Vassiliou filed it after the 20 days granted for leave to amend without obtaining leave of court to do so. At the February 10 CMC, at which the parties appeared via CourtCall, the trial court set the hearing on the motion to strike for March 17.

Vassiliou filed a "Notice of Motion and Motion for Summary Judgment" and a "Memorandum of Points and Authorit[i]es in Support of Motion for Summary Judgment" on March 10. (Some capitalization omitted.) Vassiliou filed an opposition to the State's motion to strike on March 14, which appears to have been noted by the clerk as a late filing. The trial court issued a tentative ruling granting the motion to strike, as Vassiliou did not file the third amended complaint within the 20 days allowed. The ruling

³ An apparent second amended complaint, designated "2," appears in the clerk's transcript, but without any indication it was ever filed. It appears to have been submitted as an attachment to Vassiliou's opposition to demurrer.

⁴ Subsequent references to dates are to dates in 2017, unless otherwise stated.

explained that Vassiliou filed the third amended complaint on May 18, 2016, six days after the court-imposed deadline, and he did not request leave of court to file the untimely third amended complaint. The ruling stated the trial court did not consider Vassiliou's untimely opposition. The minute order of the March 17 hearing shows that Vassiliou appeared at the hearing via CourtCall. The trial court advised Vassiliou that no request for oral argument was received; therefore, the defendant was not present and the trial court's tentative ruling would become the order of the court, namely, that the motion to strike was granted.

On April 7, the State filed a motion for judgment of dismissal pursuant to Code of Civil Procedure section 581, subdivision (f)(3). The motion was made on the grounds that the trial court granted the State's motion to strike the third amended complaint in its entirety; therefore, the court was authorized by law to enter a judgment of dismissal, and Vassiliou failed to timely seek leave of court to file an amended complaint. The State's attorney stated in a declaration that he read the trial court's tentative ruling on the State's motion to strike on March 16; he decided not to request oral argument and received no request for oral argument from Vassiliou; and based on his understanding of the Tuolumne County Superior Court local rules and rule 3.1308, the tentative ruling was adopted as the final ruling at the time set for the March 17 hearing on the motion.

Vassiliou filed several pleadings in opposition to, or relating to, the "motion to dis[]miss." (Capitalization omitted.) He also filed a "Notice of Intent to Oral Argue at date 5/12/2017," in which he stated that "on 5/12/2017 Plaintiff will attemp[t] to argue ad[]mitting or approving and order putting TAC back into record." (Some capitalization omitted.) On May 1, he filed a motion for continuance of the May 12 hearing based on his "faltering health and medical needs." (Capitalization omitted.)

The trial court issued a tentative ruling to grant Vassiliou's request to continue the matter and set a continued hearing for June 23. The trial court advised Vassiliou that all of the papers he submitted since the motion to strike was granted failed to comply with

the California Rules of Court in form and substance, and none of them would entitle Vassiliou to relief from the prior order striking the third amended complaint or prevent issuance of an order dismissing his case.⁵ According to the minute order of the May 12 hearing, Vassiliou appeared via CourtCall, but since there had not been a request for oral argument, the trial court adopted the tentative ruling as its order and continued all matters on calendar to June 23.

On June 1, Vassiliou filed the following documents: (1) a notice of intent “to oral[l]y argue everything the court deems proper” (capitalization omitted) on June 23; (2) a motion in opposition to the State’s motion to dismiss; and (3) a motion for leave to file an amended complaint, but with no amended complaint attached.

The trial court issued a tentative ruling to: (1) deny Vassiliou’s motion for summary judgment as moot, as the third amended complaint had been stricken in its entirety; (2) deny Vassiliou’s motion for leave to amend the complaint, as the motion did not comply with rule 3.1324 and to the extent Vassiliou was relying on Code of Civil Procedure section 473, subdivision (b), he made no coherent argument why he should be relieved from the order striking the third amended complaint or his subsequent failure to timely request leave to file a fourth amended complaint, and a proof of service was not attached to the motion; and (3) grant the State’s motion for judgment of dismissal, as Vassiliou delayed filing a motion for leave to amend the complaint for several months, making the motion untimely.

On June 23, the trial court adopted its tentative rulings after noting no parties or counsel were present, and no request for oral argument was made. The minute order

⁵ On January 26, 2018, the State filed a request for judicial notice of the trial court’s tentative rulings for the May 12 and June 23 hearings, which it asserted were contained in the superior court files in this case. On February 14, 2018, we deferred ruling on the motion pending consideration of the appeal on its merits. We now grant the request. (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (b).)

notes that during a later morning calendar, Vassiliou joined CourtCall and asked about the tentative ruling. The trial court briefly described the rulings and referred him to the court's Web site or phone number to hear details of the rulings.

The judgment of dismissal of the action with prejudice was filed on July 12, which dismissed the third amended complaint with prejudice, entered judgment in favor of the State and against Vassiliou, and stated that Vassiliou would take and recover nothing from the State in this action. Vassiliou filed a notice of appeal on July 20. The notice of entry of judgment was filed on July 24.

DISCUSSION

Vassiliou's opening brief was filed on November 16. Pursuant to rule 8.204(e)(2), by our own motion, we returned the brief to Vassiliou as it failed to comply with rule 8.204. Specifically, we advised Vassiliou the brief failed to support arguments with citation to authority and provide any citations to the record. We further advised that Vassiliou "has the duty to present his cause systematically and arranged in a manner so this court can ascertain the facts and the rule of law to each applicable issue," citing *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830-1831, footnote 4. We granted Vassiliou 30 days to file a new opening brief that complies with the rules. The order further provided: "Should the new opening brief fail to comply with the pertinent rules or this order, this court may decline to file the brief, may strike the brief, dismiss the appeal, or find that one or more issues on appeal have been waived."

Vassiliou filed his opening brief on December 29. The handwritten brief consists of (1) a cover sheet; (2) a table of contents that lists certain items, such as a procedural history and standard of review, but no page numbers and there is no discussion of those items in the remainder of the brief; (3) a table of "Related Cases and California Rules of Court" (some capitalization omitted), which lists three rules, rules "8116.70," 8.108, 8.124, and 8.256(c), a United States Supreme Court probate case, *Case of Broderick's Will* (1874) 88 U.S. 503, and an "Enviro[n]mental land case 51 of 2014"; (4) two pages

that contain a blank certificate of interested parties and a blank certificate of compliance; (5) four pages of rambling discussion that contains no headings, argument or legal citations; (6) a two-page “Table of Contents[,] Past Procedu[ral] History” (some capitalization omitted) that lists various documents filed in the case, but does not cite to the appellate record; and (7) a final paragraph that appears to list the damages Vassiliou is seeking.

On January 25, 2018, the State filed a motion to strike Vassiliou’s opening brief or, in the alternative, for summary affirmance, on the grounds that the brief contains no citation to the record or legal authority, makes no pertinent or intelligible argument, and does not clearly identify an error by the trial court. Vassiliou filed an opposition to the motion that did not address the State’s arguments. By a February 28, 2018 order, we denied the motion, but added that the State was not precluded from raising challenges or procedural bars based on any deficiencies in Vassiliou’s opening brief. The State, in its respondent’s brief, renews the arguments it made in its motion to strike and asks us to affirm the judgment, as Vassiliou’s opening brief fails to comply with rule 8.204 and requires it to guess the issue on appeal.

In his opening brief, Vassiliou at best argues that because he sent in a notice of intent for oral argument, his due process rights were violated when he was denied oral argument on the motion to dismiss the third amended complaint. He asserts he would have argued that “the court told Plaintiff not to sub[mit] notice of motion and motion for TAC said they would throw it away.” (Some capitalization omitted.) There is nothing in the record, however, to show that Vassiliou objected to the court not allowing him to argue, or that he had not been informed he was required to call into the court and ask for oral argument. (See, e.g., *People v. Valdez* (2012) 55 Cal.4th 82, 123, 125 [defense counsel’s failure to object to sufficiency of notice of ex parte hearing or to the holding of the hearing resulted in forfeiture of claim that trial court prejudicially erred in holding ex parte hearing].) Moreover, Vassiliou does not show prejudice, namely, that he

could have argued anything that would have changed the trial court’s rulings. (*Id.* at pp. 125-126 [harmless error analysis applies to claim that trial court erred in proceeding *ex parte*].)

Although the rules prescribing the procedures for appellate courts to follow on the filing of a defective brief do not expressly authorize the court to dismiss an appeal for failure to file a brief that conforms with the rules, and no statute or rule specifies the procedure to follow on the striking of an appellant’s initial brief and the subsequent filing of a brief that also fails to conform with the rules, an appellate court possesses inherent discretionary power to dismiss the appeal following the filing of a second defective brief. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1118-1119.) Additionally, the “failure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal.” (*Id.* at p. 1119, citing *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706.)

Vassiliou’s opening brief does not comport with the rule mandating that an appellant’s opening brief must “[p]rovide a summary of the significant facts limited to matters in the record” (rule 8.204(a)(2)(C)), as he does not summarize any of the facts. Vassiliou does not cite to any portion of the appellate record, either in his opening or reply brief, as required by rule 8.204(a)(1)(C), and neither brief contains proper citation of any pertinent legal authority, as required by rule 8.204(a)(1)(B). Finally, the arguments set forth in both briefs are unintelligible—they merely iterate and reiterate in conclusory fashion that Vassiliou was denied the right to present oral argument. As we have said, there is nothing in the record to indicate Vassiliou ever objected to the denial of oral argument or to a lack of notice regarding the procedures for requesting oral argument. As stated in *Berger v. Godden, supra*, 163 Cal.App.3d at page 1119, an appellate court is not required to consider alleged error “where the appellant merely complains of it without pertinent argument.”

While we recognize Vassiliou is representing himself, pro. per. litigants “are held to the same standards as attorneys.” (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see *Rapleyea v. Campbell* (1994) 8 Cal.4th 975, 985 [“A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.”].) Thus, Vassiliou’s status as a self-represented litigant does not exempt him from the rules of appellate procedure or relieve him of the obligation to present intelligible argument supported by the record and applicable legal authority. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) Because any arguments raised in his opening and reply briefs are not properly or sufficiently developed to be cognizable, we decline to address them and treat them as forfeited.⁶

DISPOSITION

The appeal is dismissed. The parties are to bear their own costs on appeal.

DE SANTOS, J.

WE CONCUR:

FRANSON, Acting P. J.

PEÑA, J.

⁶ Following completion of briefing in this matter, Vassiliou filed four separate motions for leave or permission to admit new or additional evidence on August 14, 2018, October 17, 2018, October 26, 2018, and June 12, 2019. We deferred ruling on the first three motions by orders dated September 11, 2018, and November 28, 2018, pending consideration of the appeal on its merits. We now deny all four motions, as they seek to admit evidence that was not before the trial court. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.)